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## **Weaknesses of Strict Liability Regulations in Environmental Crimes And Their Implications for the Effectiveness of Environmental Law Enforcement in Indonesia**

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### **ABSTRACT**

Environmental crimes have become a significant challenge to achieving sustainable development due to increasing industrial activities, natural resource exploitation, and environmental pollution. In Indonesia, environmental law enforcement continues to face substantial obstacles, particularly in addressing cases involving corporations and high-risk activities. Although the strict liability principle regulated under Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management is intended to strengthen accountability without requiring proof of fault, its implementation remains limited because environmental criminal provisions continue to emphasize fault-based liability under Articles 98 and 99. This study aimed to examine the weaknesses of strict liability regulations in environmental crimes and analyze their implications for the effectiveness of environmental law enforcement in Indonesia. This research employed a normative juridical method using statutory and analytical approaches by examining relevant legal provisions, legal doctrines, scientific literature, and environmental law regulations. The findings indicated that the main weaknesses of strict liability regulations included the lack of integration between strict liability provisions and environmental criminal liability mechanisms, uncertainty regarding their application in criminal proceedings, and limitations in imposing accountability on corporations for environmental damage. These weaknesses have created challenges in evidentiary processes and reduced the effectiveness of environmental law enforcement. This study concluded that regulatory reform was required to systematically integrate strict liability principles into environmental criminal law mechanisms to strengthen legal certainty, enhance corporate accountability, and promote sustainable environmental protection in Indonesia.

**Keywords:** Strict liability; environmental crime; environmental law enforcement; criminal liability

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### **INTRODUCTION**

Increased industrial activity, natural resource exploitation, and infrastructure development have contributed to the growing number of pollution and environmental damage cases in Indonesia. Various incidents involving water, air, and land pollution demonstrate that environmental crimes are no longer merely administrative violations but have developed into criminal offenses with broad ecological, social, and economic impacts (Nisa, 2020). Environmental damage often results in the loss of ecological functions, declining community quality of life, and long-term economic losses caused by the degradation of natural resources (Prasetyo, 2025). In this context, environmental protection is closely related to human rights, as the state has a constitutional obligation to safeguard environmental sustainability. This obligation is consistent with Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which recognizes everyone's right to a healthy environment (Wibawa, 2019).

Therefore, the increasing prevalence of environmental crimes requires an effective law enforcement system supported by criminal law instruments capable of providing deterrence

and ensuring sustainable environmental protection (Fath, 2025). Within the framework of environmental protection, criminal law functions strategically as an *ultimum remedium* and, in certain circumstances, as a *primum remedium* in addressing environmental crimes (Fitri, 2020). The application of criminal law aims to prevent further environmental damage and impose sanctions on parties responsible for pollution and environmental destruction. Law Number 32 of 2009 concerning Environmental Protection and Management regulates environmental offenses in Indonesia, particularly through Articles 98 and 99, which address acts that intentionally or negligently result in violations of environmental quality standards (Haryadi, 2024). These provisions demonstrate that criminal law serves as an instrument to control conduct that may cause environmental harm. However, the complex characteristics of environmental crimes, which often involve corporations and generate collective and long-term impacts, make the establishment of fault a significant challenge in law enforcement practices (Renggong, 2018).

The complexity of proving environmental crimes has encouraged the development of the strict liability principle, or liability without fault, within environmental law. Strict liability refers to a form of legal responsibility that does not require proof of fault but focuses on establishing a causal relationship between an activity and resulting environmental damage or loss (Jiwanti, 2023). This approach is considered relevant because environmental damage frequently arises from inherently hazardous activities where subjective fault is difficult to establish. In international environmental law, the strict liability principle has developed as a mechanism to impose responsibility on parties conducting activities that pose significant risks to the environment (Pitaloka, 2021). Therefore, the application of this principle is expected to strengthen environmental law enforcement and provide more effective protection for ecosystems and affected communities.

The regulation of strict liability under Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management was intended to strengthen environmental protection by facilitating the establishment of liability in environmental cases. Furthermore, this provision aims to ensure that parties conducting activities with significant environmental risks bear responsibility for the impacts they cause. Normatively, Article 88 reflects the legislators' commitment to strengthening legal instruments for addressing environmental crimes (Prajna, 2016).

Nevertheless, strict liability provisions in Indonesian environmental law continue to face several normative weaknesses. One of the main issues concerns the unclear application of strict liability within the framework of environmental criminal law. Article 88 of Law Number 32 of 2009 is primarily applied in civil claims concerning compensation and environmental restoration, while criminal law enforcement practices continue to rely predominantly on fault-based liability as reflected in Articles 98 and 99 of the same law (Sodikin, 2022). This situation creates inconsistency between strict liability provisions and criminal liability mechanisms that remain dependent on proving fault. Consequently, the strict liability principle has not yet significantly strengthened the effectiveness of environmental criminal law enforcement.

The Indonesian legal system has attempted to strengthen environmental protection through Law Number 32 of 2009 concerning Environmental Protection and Management (Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup or UUPPLH), which

establishes administrative, civil, and criminal legal mechanisms. One important instrument introduced within this framework is the strict liability principle regulated under Article 88 of the UUPPLH. This principle imposes responsibility on parties conducting activities with significant environmental risks without requiring proof of fault. Conceptually, strict liability seeks to overcome the limitations of traditional fault-based liability, where establishing intention or negligence is often difficult due to complex causal relationships between activities and environmental damage. However, despite its strategic importance, the implementation of strict liability in Indonesia has not yet achieved optimal results in strengthening environmental law enforcement.

Previous studies have examined the importance of strict liability as an environmental protection mechanism. Praja (2016) analyzed strict liability as an instrument for environmental law enforcement and emphasized its potential to strengthen accountability for environmental damage. Similarly, Pitaloka (2021) highlighted the development of strict liability in international practice as a legal approach for regulating activities involving high environmental risks. Recent studies by Rokhim (2022) and Tumangger (2024) also identified that the implementation of strict liability in Indonesia continues to face conceptual and regulatory weaknesses, particularly regarding its integration into environmental law enforcement mechanisms. These studies demonstrate that strict liability has substantial theoretical value; however, its practical implementation remains problematic due to inconsistencies between legal norms and enforcement practices.

Despite extensive discussions regarding strict liability, previous studies have predominantly focused on its conceptual foundation, civil liability application, or general environmental law perspectives. Limited research has specifically examined the weaknesses of strict liability regulations within the framework of environmental criminal law enforcement in Indonesia. This research gap arises because Article 88 of the UUPPLH establishes strict liability as an accountability mechanism, while criminal provisions under Articles 98 and 99 continue to emphasize fault-based liability through elements of intention and negligence. The inconsistency between these provisions creates uncertainty regarding the effectiveness of strict liability as a criminal law instrument. Therefore, further examination is required to understand how regulatory weaknesses affect environmental criminal law enforcement.

The urgency of this research is reinforced by the increasing complexity of environmental crimes involving corporations and large-scale industrial activities. Environmental offenses differ from conventional crimes because their impacts are often indirect, cumulative, and scientifically complex, making evidence collection and attribution of responsibility challenging. Law enforcement authorities frequently encounter difficulties in establishing the relationship between corporate activities and environmental damage, particularly when complex organizational structures make it difficult to identify individual responsibility. Consequently, ineffective implementation of strict liability may weaken the deterrent effect of environmental criminal law and allow high-risk activities to continue without adequate accountability. Strengthening the strict liability framework is therefore essential to support environmental protection and sustainable development.

This research introduces novelty by examining strict liability not merely as a theoretical principle but as a regulatory mechanism within Indonesia's environmental criminal law

enforcement system. Unlike previous studies that primarily analyzed strict liability from civil law or general normative perspectives, this study specifically examines the inconsistency between strict liability provisions under Article 88 and criminal liability mechanisms under Articles 98 and 99 of the UUPPLH. Furthermore, this research analyzes how these regulatory weaknesses influence evidentiary processes, corporate accountability, and the effectiveness of environmental law enforcement. Through this approach, the study provides a more comprehensive understanding of why strict liability has not been optimally implemented despite its recognition in Indonesian environmental legislation.

The objective of this research was to analyze the weaknesses of strict liability regulations in Indonesian environmental criminal law and examine their implications for the effectiveness of environmental law enforcement. Specifically, this study aimed to identify normative inconsistencies between strict liability provisions and fault-based criminal liability mechanisms, evaluate challenges in applying strict liability against environmental offenders, and formulate recommendations for strengthening environmental criminal law policies. By focusing on regulatory structures and enforcement implications, this research sought to provide a critical legal analysis of the current position of strict liability within Indonesia's environmental protection framework.

The contribution of this research lies in providing theoretical and practical insights into the development of environmental criminal law in Indonesia. From an academic perspective, this study contributes to discussions regarding the integration of strict liability principles into modern environmental law systems, particularly in addressing the limitations of conventional fault-based approaches. From a practical perspective, the findings may assist legislators, law enforcement officials, judges, and environmental policymakers in developing clearer regulations and enforcement strategies. Strengthening strict liability mechanisms may improve legal certainty, facilitate evidentiary processes, and enhance corporate accountability for environmental damage.

Ultimately, this research is expected to contribute to the advancement of sustainable environmental governance in Indonesia by providing recommendations for reforming environmental criminal law policies. Clearer integration between strict liability principles and criminal liability provisions may strengthen environmental law enforcement, particularly in cases involving corporations and high-risk activities. Through improved regulatory certainty and enforcement capacity, environmental law can function more effectively as a preventive and corrective instrument to protect ecosystems, communities, and future generations. Therefore, strengthening strict liability regulations represents an important step toward establishing a more responsive, accountable, and sustainable environmental protection system in Indonesia.

## **METHOD**

This study employed a normative juridical research method using statutory and analytical approaches to examine the regulation of the strict liability principle in environmental crimes and its implications for environmental law enforcement in Indonesia. The statutory approach was applied by examining relevant legal provisions, particularly Law Number 32 of 2009 concerning Environmental Protection and Management, including Article 88 on strict liability and Articles 98 and 99 on environmental pollution and destruction

offenses. The analytical approach was conducted by examining legal concepts, principles, and doctrines related to criminal liability in environmental crimes, particularly the application of strict liability, to identify normative weaknesses and formulate legal arguments for strengthening environmental law enforcement.

The legal materials analyzed consisted of primary legal materials, including statutory regulations; secondary legal materials, including legal literature, scientific publications, and expert opinions; and tertiary legal materials as supporting references. These materials were analyzed to evaluate the consistency of legal norms and identify regulatory issues affecting the implementation of strict liability within Indonesia's environmental criminal law framework.

## **RESULTS AND DISCUSSION**

### **The Concept and Position of Strict Liability in the Environmental Law System**

The concept of strict liability in environmental law is a form of legal accountability that does not require proof of the perpetrator's fault, but rather simply requires evidence of an act that caused environmental loss or damage. This principle was developed in response to the limitations of the concept of fault in classical criminal law, which is often difficult to apply in environmental cases. Environmental crimes are generally complex, involving high technology, large-scale industrial activities, and having extensive and long-term impacts on ecosystems and human life. Therefore, a fault-based liability approach is often ineffective in providing optimal environmental protection. In the modern legal context, strict liability is seen as a mechanism that places legal responsibility more proportionally on parties engaging in activities that pose a high risk to the environment. (Tumangger, 2024)

In the development of criminal law doctrine, strict liability is often associated with the concept of regulatory offenses, namely violations of legal provisions intended to protect the public interest, including public health, safety, and the environment. In this context, criminal law no longer solely focuses on proving the subjective guilt of the perpetrator, but also emphasizes protecting the interests of society at large. Environmental crimes are often categorized as crimes that have a serious impact on the public interest because environmental damage can affect the balance of the ecosystem and the well-being of society. Therefore, the application of strict liability in environmental law is intended to strengthen the preventive function of criminal law and ensure that perpetrators of activities that potentially pose risks to the environment are held accountable for their impacts. (Rokhim, 2022)

Normatively, environmental protection in Indonesia has a strong constitutional basis. These provisions demonstrate that environmental protection is part of the state's responsibility to ensure public welfare. Within this framework, environmental law serves as a crucial instrument to ensure that development activities and the utilization of natural resources adhere to the principles of sustainability and do not cause environmental damage that is detrimental to the public interest. (Hasim, 2023)

This law contains various legal instruments aimed at preventing and mitigating environmental pollution and damage. One important instrument stipulated in this law is the implementation of Article 88's strict liability principle. According to this article, anybody who produces or handles hazardous and toxic waste, employs hazardous and toxic materials, or presents a significant environmental risk is strictly liable for any damages incurred without

the need for evidence of misconduct. This provision demonstrates the legislators' efforts to strengthen legal accountability mechanisms for activities with significant potential to cause environmental damage. (Pasapan, 2020)

In addition to provisions regarding absolute liability, there are further regulations in Law Number 32 of 2009 covering Environmental Protection and Management pertaining to environmental crimes in a number of articles that provide criminal penalties for those who damage or contaminate the environment. For instance, Article 98 states that anyone who willfully violates ambient air quality standards, water quality standards, or environmental damage criteria faces imprisonment and a fine. Meanwhile, Article 99 stipulates criminal liability for acts committed through negligence that result in exceeding environmental quality standards. These provisions demonstrate that environmental law in Indonesia combines a fault-based liability approach with an absolute liability approach to enhance the effectiveness of environmental protection. (Is, 2020)

Thus, the existence of the strict liability principle in the Indonesian environmental legal system is part of an effort to strengthen environmental protection mechanisms and ensure that parties engaging in high-risk activities are held accountable for their impacts. Therefore, Strict responsibility is a key idea in the environmental legal system because it offers a more efficient way to hold people accountable for actions that could harm the environment, while simultaneously strengthening law enforcement efforts to achieve sustainable environmental protection.

### **Weaknesses of Strict Liability Regulations in Environmental Crimes in Indonesia**

One of the main weaknesses in strict liability regulations is the unclear application of this idea to environmental criminal law. The primary implementation of Law Number 32 of 2009's Article 88 on Environmental Protection and Management is in civil cases involving environmental rehabilitation and compensation. Meanwhile, the criminal provisions stipulated in the same law still emphasize proving fault. This is evident in Article 98, which stipulates that any person who intentionally commits an act that results in exceeding environmental quality standards shall be punished with imprisonment and a fine. Furthermore, Article 99 also stipulates that any person whose negligence causes environmental quality standards to be exceeded may be subject to criminal sanctions. These provisions demonstrate that environmental criminal liability is still based on intent or negligence.

This situation creates a normative inconsistency between the concept of absolute liability and the criminal liability system, which still focuses on fault. Conceptually, strict liability should allow law enforcement to be enforced without requiring proof of fault, but rather by simply proving the act that caused environmental loss or damage. However, within the regulatory structure According to Articles 98 and 99, criminal provisions Law Number 32 of 2009 concerning Environmental Protection and Management still necessitates a deliberate or careless component. The strict liability principle cannot be clearly integrated because of this discrepancy. into the environmental criminal liability mechanism, resulting in limited application and frequent omission in criminal law enforcement.

Another normative weakness is the absence of a clear formulation governing the application of strict liability in environmental criminal provisions. Although Article 88 provides the basis for the application of absolute liability, this provision is not explicitly

linked to the criminal punishment mechanism for perpetrators of environmental crimes. As a result, law enforcement officials tend to use a conventional approach to proving environmental crimes, which emphasizes proving the element of fault on the part of the perpetrator. This situation demonstrates that the strict liability provisions in Indonesian environmental law have not been fully formulated systematically within the criminal law framework, creating uncertainty in their application.

Furthermore, the weakness of strict liability provisions is also related to the suboptimal provisions regarding corporate criminal liability in environmental cases. In many cases of environmental pollution or damage, the perpetrators of the activities causing the environmental impact are often business entities or corporations. Although Law Number 32 of 2009 concerning Environmental Protection and Management regulates corporate criminal liability in Articles 116, 117, and 118, these provisions still focus on proving fault within the corporate organizational structure. This results in the ineffective application of strict liability to corporations, even though industrial activities with high environmental risks are often conducted by business entities with significant economic and technological capacity.

Based on these various issues, it can be concluded that strict liability provisions in Indonesian environmental law still have several normative weaknesses that affect their effectiveness in the environmental criminal law system. Although Article 88 of The legal foundation is provided by Law Number 32 of 2009 concerning Environmental Protection and Management. for the application of strict liability, this provision has not been clearly integrated with the criminal liability mechanisms stipulated in Articles 98 and 99. Consequently, the principle of strict liability has not been fully utilized as an instrument to strengthen law enforcement against environmental crimes. This condition indicates the need for updating environmental criminal law regulations that are able to integrate the principle of strict liability more clearly and systematically in order to increase the effectiveness of environmental protection in Indonesia.

### **Implications of Weaknesses in Strict Liability Regulations on the Effectiveness of Environmental Law Enforcement in Indonesia**

The weaknesses in strict liability regulations in Indonesian environmental law have significant implications for the effectiveness of environmental law enforcement. In criminal law enforcement practices, law enforcement officials often face difficulties in proving the element of fault, whether intentional or negligent. This is due to the complex nature of environmental crimes, the involvement of industrial technology, and the frequent indirect and long-term impacts of damage. One of the objectives of implementing the strict liability principle is to overcome these evidentiary difficulties by placing legal responsibility on parties engaging in high-risk activities on the environment. However, because the strict liability provisions in Law Number 32 of 2009 concerning Environmental Protection and Management have not been fully integrated with the criminal liability system, law enforcement officials still tend to use the fault-based approach as stipulated in Articles 98 and 99 of the law.

This difficulty in proving fault often renders the law enforcement process for environmental crimes ineffective. In many cases of environmental pollution and destruction, law enforcement officials must prove a causal relationship between the perpetrator's actions and the environmental damage that occurred, as well as proving the existence of an element

of intent or negligence on the part of the perpetrator, while Article 99 regulates acts committed due to negligence. These evidentiary requirements often become obstacles in practice, especially when the activities causing environmental damage involve complex production processes and are carried out by business entities with complex organizational structures.

Another implication of the weaknesses in strict liability regulations is evident in the courts' tendency to focus on proving fault in environmental criminal cases. Although Law Number 32 of 2009 on Environmental Protection and Management, Article 88 stipulates absolute liability without proof of fault, in judicial practice, this provision is more often applied in civil lawsuits related to compensation and environmental restoration. In criminal cases, judges generally continue to emphasize proving intent or negligence, as stipulated in environmental criminal provisions. This situation indicates that the principle of strict liability has not been fully implemented as an instrument in the environmental criminal liability mechanism, thus its potential to facilitate law enforcement has not been optimally utilized.

Furthermore, the weaknesses in strict liability regulations also impact the limited accountability of corporations in environmental criminal cases. Large-scale industrial operations carried out by corporations or commercial entities are often the cause of pollution and environmental harm. Despite the fact that Articles 116, 117, and 118 of Law Number 32 of 2009 concerning Environmental Protection and Management specify corporate criminal culpability, its practical application still faces various obstacles, particularly in proving fault within the corporate organizational structure. Under these circumstances, the application of the principle of strict liability could be an effective instrument to ensure that corporations are held accountable for environmental damage caused by their business activities. However, because the regulation has not been explicitly formulated in the context of criminal liability, this principle cannot be optimally applied in law enforcement against corporations.

Therefore, an update to environmental criminal law policy is needed that strengthens the application of the strict liability principle in law enforcement against environmental crimes. This reformulation of the legal regulations should be directed at a clearer integration of the principle of absolute liability as stipulated in Article 88 with the environmental criminal provisions stipulated in Articles 98 and 99. With more stringent and systematic regulations, the strict liability principle is expected to function as an effective instrument in facilitating the proof of environmental crimes, increasing the accountability of business actors or corporations, and strengthening sustainable environmental protection in Indonesia.

## **CONCLUSION**

However, this provision has not been optimally integrated into the environmental criminal liability framework. This limitation is evident from criminal provisions that continue to require proof of intent or negligence, as stipulated in Articles 98 and 99 of the same law. This situation creates a normative inconsistency between the strict liability principle and the fault-based criminal liability mechanism. Consequently, the application of strict liability in environmental criminal law enforcement remains limited and has not effectively addressed evidentiary challenges in cases of pollution and environmental degradation, particularly those involving industrial activities or corporations.

In this regard, reform of environmental criminal law policies is necessary to clarify and strengthen the application of strict liability within the Indonesian environmental legal system. Regulatory reform should be directed toward establishing a more systematic integration between the strict liability provisions under Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management and the environmental criminal liability provisions under Articles 98 and 99, allowing strict liability to function more effectively within the criminal liability framework. Furthermore, strengthening regulations on corporate criminal liability and improving the capacity of law enforcement authorities in handling complex environmental cases are necessary. Through clearer and more comprehensive regulations, strict liability is expected to become an effective instrument for enhancing corporate accountability, strengthening the deterrent effect against environmental offenders, and promoting sustainable environmental protection in Indonesia.

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